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No. 91-542

In The

Supreme Court of the United States

October Term, 1991

ELLIS B. WRIGHT, JR., WARDEN, et al.,

Petitioners,

v.

FRANK ROBERT WEST, JR.,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF FOR THE PETITIONERS

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QUESTIONS PRESENTED

I. In determining whether to grant a petition for a writ of habeas corpus by a person in custody pursuant to the judgment of a state court, should a federal court give deference to the state court's application of law to the specific facts of the petitioner's case or should it review the state court's determination *de novo*?

II. May a federal court grant collateral relief merely because it disagrees with the good faith reasonable decision of the state courts?

III. May a federal court fundamentally alter the standard established by this Court in *Jackson v. Virginia* and vacate a state conviction on the basis of nothing more than "concern" about a deeply-rooted common law principle that the prisoner never raised in state court?

LIST OF PARTIES

The petitioners in this Court were the respondents in the proceedings below: Ellis B. Wright, Warden, and Mary Sue Terry, Attorney General of Virginia (hereafter "the Commonwealth"). The respondent, Frank Robert West, Jr., a Virginia prisoner, was the petitioner in the proceedings below.

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BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is reported at 931 F.2d 262 (4th Cir. 1991). (Ptn. App. 1-22). The Fourth Circuit's amended order denying the Commonwealth's petition for rehearing and suggestion for rehearing en banc is reprinted in the appendix to the petition for a writ of certiorari. (Ptn. App. 34-35).

The memorandum opinion of the United States District Court for the Eastern District of Virginia, which denied West's petition for habeas corpus relief, is unreported. (Ptn. App. 23-33).

JURISDICTION

The judgment of the Fourth Circuit was entered on April 29, 1991. The amended order denying the Commonwealth's petition for rehearing was entered on July 8, 1991. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The petition for a writ of certiorari was filed on September 26, 1991, and initially was granted on December 16, 1991. An amended order granting certiorari was issued on December 18, 1991.

APPLICABLE PROVISIONS OF LAW

CONSTITUTIONAL PROVISION

The Fourteenth Amendment to the United States Constitution states in pertinent part, "[N]or shall any State deprive any person of life, liberty or property, without due process of law. . . . "

STATUTORY PROVISIONS

At the time of West's trial in 1979, Virginia Code § 18.2-95 provided in pertinent part that "[a]ny person who . . . [c]ommits simple larceny not from the person of another of goods and chattels of the value of $100 or more, shall be deemed guilty of grand larceny which shall be punishable by confinement . . . for not less than one nor more than twenty years or in the discretion of the jury . . . [confinement] in jail for a period not exceeding

twelve months or [a fine of] not more than $1,000, either or both." (Va. Code Ann. § 18.2-95 (Repl. Vol. 1975)).[1]

The United States Code, 28 U.S.C. § 2254(a), provides that a federal court "shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." Section 2243 of Title 28 provides in pertinent part that a federal habeas court "shall . . . dispose of the matter as law and justice require."

STATEMENT OF THE CASE

On December 13, 1978, Angelo Cardova secured his vacation home in Westmoreland County, Virginia, and did not return until December 26th, when he discovered that the home had been burglarized and that various items valued at about $3,500 had been stolen. (Ptn. App. 2). On January 10, 1979, sheriff's deputies from Westmoreland and Northumberland Counties searched the Gloucester County home of Frank Robert West, Jr., and found numerous items that had been stolen from the Cardova residence. It is undisputed that West had exclusive possession of the stolen items. (Ptn. App. 2-3).

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[1] The statutory minimum value has since been raised to $200. *See* Va. Code Ann. § 18.2-95 (Repl. Vol. 1988).

West was indicted for grand larceny in Westmoreland County.[2] At trial, Mr. Cardova identified a wide variety of items found in West's possession as having been taken from his vacation home: two television sets, a sleeping bag, a shell-framed mirror, a coffee table, a ball-shaped hardwood carving, a synthetic-fiber fur coat with the name "Esther" embroidered in the lining, a box of flatware, a mounted lobster, a silk jacket with "Korea 1970" embroidered on the outside, and a record player. The value of Cardova's property recovered from West's residence was about $1,100. (Ptn. App. 3).

West, who was a previously convicted felon, testified and denied stealing any of Cardova's property. He claimed to have "bought a lot of the merchandise [found in his home] from . . . flea bargain places," where "a lot of times you buy things . . . that are stolen," but "[t]he biggest part of the time you never know it." (J.A. 21).

West also claimed that he bought some of Cardova's property for $500 from a man named Ronnie Elkins (J.A. 22), but had no explanation for his possession of Cardova's coffee table or a color television bearing Cardova's social security number. (J.A. 23, 28-29). At first, West stated that the purchase from Elkins occurred in Newport News, but later said the transaction took place in Gloucester. (J.A. 22, 26). According to West, the transaction with Elkins took place before January 1, 1979. (J.A. 25, 27). "Ronnie Elkins," however, did not testify and the

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[2] West also was indicted for burglary but the Commonwealth elected not to prosecute that charge. (J.A. 4-5).

defense presented no evidence to support West's testimony.[3]

Even the court below conceded that West's explanation to the jury "was somewhat confused and [that] he was unable to account for how he acquired some of the merchandise." (Ptn. App. 4). In fact, the court admitted that "at first blush [West's testimony] may itself seem incredible, thereby drawing all else in question." (Ptn. App. 19, n.7). The very best that the Fourth Circuit could say about West's "explanation" was that "there was nothing inherently implausible about" it. (Ptn. App. 18).

The jury was properly instructed, without objection, on the Commonwealth's burden of proof beyond a reasonable doubt, West's presumption of innocence, the jury's role in assessing the credibility of witnesses, and the proper use of circumstantial evidence. (J.A. 32-36). Included in the instructions regarding circumstantial evidence was an instruction that required the jury "to scan such evidence with great care and caution" and to acquit West unless it had "a moral conviction of guilt of the defendant beyond a reasonable doubt." (J.A. 35-36). The jury was also properly instructed on the elements of the offense. (J.A. 33-34).

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[3] It was revealed during the state habeas corpus proceedings that prior to trial West "repeatedly advised counsel he had no witnesses" who could testify on his behalf. (Ptn. App. 31). In fact, West instructed his trial attorney to "put him on the stand and he (West) would do the rest." (J.A. 45). He refused to tell his attorney the details of what his testimony would be, and counsel had never heard the name "Ronnie Elkins" until West testified at trial. (J.A. 45-46).

Concerning Virginia's longstanding common law inference involving exclusive possession of recently stolen property, the jury was instructed:

> If you believe from the evidence beyond a reasonable doubt that property of a value of $100.00 or more was stolen from Angelo F. Cardova, and that it was recently thereafter found in the exclusive and personal possession of the defendant, and that such possession has been unexplained or falsely denied by the defendant, then such possession is sufficient to raise an inference that the defendant was the thief; and if such inference, taking into consideration the whole evidence, leads you to believe beyond a reasonable doubt that the defendant committed the theft, then you shall find the defendant guilty.

(Ptn. App. 4). West did not object to this instruction at trial and has never claimed that the instruction was erroneous.[4] The jury found the petitioner guilty of grand larceny and sentenced him to ten years imprisonment.

West's direct appeal raised several issues, including whether the evidence was sufficient to support his conviction. The thrust of his sufficiency claim was that West had provided a reasonable explanation for his possession of the stolen property. (J.A. 38-40). No claim attacking the

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[4] Both West and the Fourth Circuit have acknowledged that the inference described in this instruction was "permissive" rather than mandatory. (Br. Op. 7-10; Ptn. App. 4, 8). This case, therefore, is not one where it is alleged that a mandatory presumption improperly shifted the burden of proof from the prosecution to the defendant. *See, e.g., Sandstrom v. Montana*, 442 U.S. 510 (1979).

validity of Virginia's common law inference was raised. On May 30, 1980, the Supreme Court of Virginia, finding no reversible error, refused the petition. (J.A. 41).

On May 10, 1987 – almost eight years after his conviction – West filed a petition for a writ of habeas corpus in the Supreme Court of Virginia. That petition repeated the claim that the evidence was insufficient to support his conviction, but again, there was no attack upon the validity of the common law inference. (J.A. 42-43). The petition was denied and dismissed on May 13, 1988. (J.A. 48-49).

On June 12, 1988, West filed his federal habeas petition in the United States District Court for the Eastern District of Virginia, Richmond Division. Included in his petition was his claim that the evidence was insufficient to support his conviction; yet again, however, West did not attack the validity of Virginia's common law inference. (J.A. 50-51, 55-56). United States District Judge James R. Spencer applied the constitutional standard established by this Court in *Jackson v. Virginia*, 443 U.S. 307 (1979), and found that "there was sufficient evidence upon which a rational trier of fact could find West guilty beyond a reasonable doubt." (Ptn. App. 28). Judge Spencer specifically noted West's attempt to explain his possession of the stolen goods, but concluded that "[i]t is clear from the evidence that the defendant was found in possession of recently stolen property, and that the jury did not believe his explanation." (Ptn. App. 28).

On April 29, 1991, however, a panel of the Fourth Circuit reversed the district court because West's grand larceny conviction supposedly violated "due process."

(Ptn. App. 20). The panel did so only after expressing its "concern about the continued viability of the inference's basic premise" and stating its belief that the "premise [for the inference] has been substantially undercut by intervening technological and demographic developments," whatever that means. (Ptn. App. 11-13). The appeals court conceded, however, that the jury had been properly instructed with respect to the inference. (Ptn. App. 20).

On May 10, 1991, the Commonwealth petitioned for rehearing with a suggestion for rehearing en banc. The ten judges of the Fourth Circuit split evenly on whether to grant a rehearing en banc, and the Commonwealth's petition was thus denied. (Ptn. App. 34-35).

This Court granted certiorari in an amended order dated December 18, 1991. *See* 112 S.Ct. 672 (1991).

SUMMARY OF ARGUMENT

Virginia's position is very simple: a federal court's mere disagreement with a state court's decision does not, and should not, furnish a basis for collateral relief, regardless of whether the issue is labeled "factual," "legal," or a so-called "mixed" issue of law and fact.

Over the past few years, this Court has returned to the abiding principle that a federal habeas corpus court normally should defer to the resolution of a state prisoner's constitutional claim by the state's highest court. *Teague v. Lane*, 489 U.S. 288 (1989), and its progeny now command deferential, rather than *de novo*, review. Unless the state court decision truly can be deemed disobedient to the Constitution, *i.e.*, no reasonable jurist could have

rejected the prisoner's claim, a federal court may not substitute its own judgment for the state court's.

Limiting independent federal collateral review to the rare instances of state judicial constitutional disobedience is faithful to the core purpose of the writ of habeas corpus and makes great good sense as well. Under even the most restrictive view of *Teague*, state court decisions generally are immune from *de novo* federal collateral review if the prisoner is asserting a "new" legal principle; under 28 U.S.C. § 2254(d), state court findings of fact are presumptively immune from such review. If neither legal nor factual issues are entitled as a matter of "right" to *de novo* review, then surely there is no justification for incurring the significant costs of permitting such review of state court applications of settled law to historical fact. Indeed, those costs are particularly high in such a context because in most instances, as here, a federal ruling contrary to the state court decision constitutes nothing more than mere disagreement on a matter upon which reasonable courts could differ.

Federal deference to reasonable, good faith state court judgments fosters and protects the interests of finality, comity and federalism that are at the heart of federal review of state convictions under § 2254. These important interests, however, cannot long survive if, as happened here, a federal appeals court may overturn a twelve-year-old conviction simply because it disagrees with a firmly-engrained principle of a state's common law and the manner in which it was applied in a given case.

For centuries, judges and juries have been permitted to infer that the possessor of recently stolen goods is the

thief. Thus, where it was undisputed that West was found in exclusive possession of recently stolen goods and where the jury clearly rejected West's unsupported attempt to explain such possession, the state court decisions affirming his grand larceny conviction against a sufficiency-of-the-evidence challenge were unquestionably reasonable. The Fourth Circuit's second-guessing of those decisions on the basis of its "concern" about the modern-day viability of the common law inference – a matter never raised by West in state court or in the district court – simply cannot be squared with this Court's cases circumscribing the scope of federal collateral review. *See generally Estelle v. McGuire*, 112 S.Ct. 475, 478 (1991) (emphasizing "the limited scope of federal habeas review of state convictions").

Teague's deference principle converges in this case with the similar teaching of *Jackson v. Virginia*, 443 U.S. 307 (1979). If a state court has rejected a prisoner's sufficiency-of-the-evidence claim in a reasonable, rational manner, then both *Teague* and *Jackson* command deference to that determination by a federal habeas court.

The Fourth Circuit's decision in this case plainly violates both *Teague* and *Jackson*. By the Court of Appeals' own admission, its resolution of West's claim was a "judgment call" and represents nothing more than a "disagreement" with the resolution reached by the jury, the state trial judge, a unanimous Supreme Court of Virginia, and the federal district court. But a mere difference of opinion is a woefully inadequate justification for incurring the significant costs that the granting of federal habeas relief entails.

ARGUMENT

I

A FEDERAL HABEAS CORPUS COURT REVIEWING THE CONSTITUTIONAL CLAIM OF A STATE PRISONER MUST DEFER TO THE STATE COURT'S RESOLUTION OF THE CLAIM IF THAT DECISION WAS REASONABLE WHEN MADE.

A. *Federal Collateral Review of State Convictions Is Governed by a Standard of Reasonableness.*

The notion that a state prisoner has a right to *de novo* federal collateral review of his constitutional claims, *see Brown v. Allen*, 344 U.S. 443, 500-501 (1953) (Frankfurter, J., concurring), surely has not survived this Court's decisions in *Teague v. Lane*, 489 U.S. 288 (1989), *Butler v. McKellar*, 110 S.Ct. 1212 (1990), and *Saffle v. Parks*, 110 S.Ct. 1257 (1990).[5] The "reasonableness" standard of

[5] Justice Frankfurter's concurring opinion in *Brown* is at odds with the majority opinion in that case that expressly stated that a federal district court may exercise its discretion to defer to a prior adjudication by a state court. *See Brown*, 344 U.S. at 463, 465. A subsequent pronouncement by a bare majority of this Court in *Townsend v. Sain*, 372 U.S. 293, 318 (1963), to the effect that a federal court may never defer to a state court's findings of law, mistakenly relied upon the Frankfurter concurrence rather than the majority opinion in *Brown*. *See* Criminal Justice Legal Foundation Amicus Brief in *Keeney v. Tamayo-Reyes*, No. 91-1859 at 3-19 (explaining why *Townsend* has little or no precedential value). Justice Frankfurter's concurrence in *Brown*, moreover, made no attempt to explain what had created the "right" to *de novo* federal review in the three short years since *Darr v. Burford*, 339 U.S. 200 (1950), where the Court had said that a federal court "may decline to examine further into the merits [of a state prisoner's claim] because they have

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collateral review as announced and applied in these cases is premised on a recognition that this Court has " *'never* defined the scope of the writ [of habeas corpus] simply by reference to a perceived need to assure that an individual accused of crime is afforded a trial free of constitutional error.' " *Teague*, 489 U.S. at 308, *quoting Kuhlmann v. Wilson*, 477 U.S. 436, 447 (1986) (emphasis added). To the contrary, the "interests of comity and finality must also be considered in determining the proper scope of habeas review." *Teague*, 489 U.S. at 308; *see also Brecht v. Abrahamson*, 944 F.2d 1363, 1372 (7th Cir. 1991) (Easterbrook, J.) ("Today – as for most of our history – the Court puts considerations of finality and federalism at the forefront of any discussion of the scope of collateral review.").

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already been decided against the petitioner." 339 U.S. at 215. *Darr's* laudable goal was the avoidance of "repeated adjudications of the same issues by courts of coordinate powers." *Id.* Just nine years before *Brown*, moreover, this Court stated in *Ex parte Hawk*, 321 U.S. 114, 118 (1944), that "[w]here the state courts have considered and adjudicated the merits of [a state prisoner's] contentions, . . . a federal court will not ordinarily reexamine upon writ of habeas corpus the questions thus adjudicated." Nevertheless, although it "was not easily arrived at," the rule immediately prior to *Teague* was that a federal habeas court generally could "overturn the judgment of the highest court of a State insofar as it deals with the application of the United States Constitution or laws to the facts in question." *See Sumner v. Mata*, 449 U.S. 539, 543-544 (1981). For a concise history of the manner in which this Court has expanded and, more recently, contracted the scope of the writ, see *Brecht v. Abrahamson*, 944 F.2d 1363, 1372 (7th Cir. 1991). *See also Stone v. Powell*, 428 U.S. 465, 474-478 (1976).

The "significant costs of federal habeas review" of state convictions have been well documented by this Court. *See McCleskey v. Zant*, 111 S.Ct. 1454, 1468-1469 (1991). Issuance of the writ "strikes at finality." *Id.* at 1468. "Without finality, the criminal law is deprived of much of its deterrent effect." *Teague*, 489 U.S. at 309, *citing* Friendly, *Is Innocence Irrelevant? Collateral Attacks on Criminal Judgments*, 38 U.Chi.L.Rev. 142, 150 (1970), and Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 Harv. L. Rev. 441, 450-451 (1963). Lack of finality, in turn, adversely affects federal/state comity because, while "[o]ur federal system recognizes the independent power of a State to articulate societal norms through criminal law . . . the power of a State to pass laws means little if the State cannot enforce them." *McCleskey*, 111 S.Ct. at 1469. It was these fundamental concerns that led to this Court's decision in *Teague*. *See generally Stone v. Powell*, 428 U.S. 465, 491 n.31 (1976) ("Resort to habeas corpus . . . results in serious intrusions on values important to our system of government.").

In its most basic form, the *Teague* doctrine precludes a federal habeas court from affording a state prisoner the benefit of a case decided after his own case became final on direct appeal, except in two limited circumstances not involved here.[6] 489 U.S. at 311. This doctrine was

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[6] The first *Teague* exception relates to claims that place an entire category of conduct or persons beyond the reach of the criminal law, either as to conviction or punishment. *See Teague*, 489 U.S. at 311. *See also Penry v. Lynaugh*, 492 U.S. 302, 329-330 (1989) (first exception covers a proposed new rule that would have "prohibited the execution of mentally retarded persons").

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premised on the Court's agreement with Justice Harlan that the foremost purpose of the writ is to deter judicial disobedience to the Constitution and that this deterrence function is accomplished sufficiently if the habeas court applies the constitutional standards that prevailed at the time of the state court decision. *Id.* at 306, *citing Desist v. United States*, 394 U.S. 244, 262-263 (1969) (Harlan, J., dissenting).

The *Teague* doctrine also reinforces the traditional distinction between the type of federal review available from this Court on direct appeal from a state conviction and the more limited type available from the lower federal courts in a collateral proceeding. *Teague*, 489 U.S. at 306, *quoting Mackey v. United States*, 401 U.S. 667, 682-683 (1971) (separate opinion of Harlan, J.) ("Habeas corpus . . . . is not designed as a substitute for direct review."); *see also Brecht*, 944 F.2d at 1374 ("Collateral review is not supposed to be a replay of the direct appeal").

Teague makes clear, then, that an entire category of purely legal claims is shielded from *de novo* federal collateral review.[7] State court factual findings, on the other hand, are shielded from *de novo* review by 28 U.S.C.

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The second relates to claims that create new "watershed" principles "without which the likelihood of an accurate conviction is seriously diminished." *Teague*, 489 U.S. at 313.

[7] *Teague*, of course, was not the first case to demonstrate the point that there is no "right" to *de novo* federal collateral review of a constitutional claim. *See Stone v. Powell*, 428 U.S. at 481-482 (Fourth Amendment claims); *Wainwright v. Sykes*, 433 U.S. 72, 87 (1977) (procedurally defaulted claims of *any* type).

§ 2254(d) and this Court's cases strictly enforcing the statutory "presumption of correctness." *See, e.g., Sumner v. Mata*, 449 U.S. 539 (1981). Thus, if the Fourth Circuit had framed West's claim as either a purely legal one (for example, the constitutionality of Virginia's common law inference) or as a purely factual one, *de novo* review clearly would have been precluded. It is impossible, therefore, to justify such intrusive plenary federal review simply because West's sufficiency claim can be characterized as a so-called "mixed" question of applying law to historical fact.[8]

Implicitly recognizing that impossibility, this Court has held that a ban on retroactive application of newly-decided cases is not the only precept of the *Teague* doctrine. When state courts make "reasonable, good-faith interpretations of existing precedents," a subsequent ruling to the contrary by a federal habeas court is prohibited. *Butler v. McKellar*, 110 S.Ct. at 1217. In *Butler*, the majority expressly noted the prisoner's argument that the *Teague* doctrine did not apply to his case because the claim he was advancing "was merely an application of *Edwards* [*v. Arizona*, 451 U.S. 477 (1981)] to a slightly different set of facts." *Butler*, 110 S.Ct. at 1217. The Court rejected Butler's argument because the determinative factor is *not* whether a claim is "controlled" or "governed"

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[8] There is, of course, no such thing as a question of "pure law." The determination of *any* legal issue requires application of some pre-existing legal principle to a set of facts that will vary in specificity from case to case. The only difference between a "pure" legal issue and a so-called "mixed" one is that the former can be applied more mechanically and the latter is more fact-intensive. But they are both legal issues.

by a prior decision, but whether the claim being advanced "was susceptible to debate among reasonable minds" at the time it was rejected by the state courts. *Id.*

Thus, while *Teague* precludes *de novo* collateral review of "new" constitutional claims based upon cases decided after a state prisoner's conviction became final, *Butler* erects a similar bar with respect to claims involving applications of settled law to a given set of facts. Simply put, this Court already has held that so long as the state court's application of existing constitutional precedent to the historical facts was reasonable, a federal habeas court *must* defer to that resolution.

The import of *Butler* is evidenced, not only by the majority's rejection of Butler's "mere application" argument, but by the dissent's response to the Court's decision. Writing for Justices Marshall, Blackmun and Stevens, Justice Brennan stated:

> [T]he majority today limits federal courts' habeas corpus function to reviewing state courts' legal analysis under the equivalent of a 'clearly erroneous' standard of review. *A federal court may no longer consider the merits of the petitioner's claim based on its best interpretation and application of the law prevailing at the time her conviction became final; rather it must defer to the state court's decision rejecting the claim unless the decision is patently unreasonable.*

110 S.Ct. at 1221 (emphasis added, footnote omitted). *See also id.* at 1219 ("a state prisoner can secure habeas relief only by showing that the state court's rejection of the constitutional challenge was *so* clearly invalid under then-prevailing legal standards that the decision could

not be defended by any reasonable jurist") (emphasis in original).[9]

On the same day *Butler* was decided, the Court also applied the "reasonableness" standard of collateral review in *Saffle v. Parks*. The state prisoner in *Saffle* claimed "that an instruction in the penalty phase of his trial, telling the jury to avoid any influence of sympathy, violates the Eighth Amendment." 110 S.Ct. at 1258. As support for this claim, the prisoner relied on *Lockett v. Ohio*, 438 U.S. 586 (1978), and *Eddings v. Oklahoma*, 455 U.S. 104 (1982), both of which were decided *before* his conviction and sentence became final. *Saffle*, 110 S.Ct. at 1260. Nevertheless, the Court found that granting collateral relief on such a claim would violate the *Teague* doctrine:

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[9] The *Butler* dissent is also instructive because it shows that the arguments West will no doubt raise in favor of *de novo* review have already been rejected by this Court. For instance, Justice Brennan unsuccessfully argued that Congress supposedly had expressed a clear intent that the constitutional claims of state prisoners be subject to *de novo* review. 110 S.Ct. at 1224-1225. He also argued that such plenary review is necessary to deter state courts from allowing constitutional violations to go unremedied. *Id.* at 1222. The former argument is simply wrong. *See Duckworth v. Eagan*, 492 U.S. 195, 212 (1989) (O'Connor & Scalia, JJ., concurring); 28 U.S.C. § 2243 (federal habeas court must "dispose of the matter as law and justice require"). The latter argument, although implicitly rejected in *Butler*, was rejected expressly in *Sawyer v. Smith*, 110 S.Ct. 2822, 2827 (1990) ("This argument is premised on a skepticism of state courts that we decline to endorse. State courts are coequal parts of our national judicial system and give serious attention to their responsibilities for enforcing the commands of the Constitution."). Indeed, there is no sufficient justification for federal *de novo* review – either in practice, policy, fact or law.

> We . . . cannot say that the large majority of federal and state courts that have rejected challenges to antisympathy instructions . . . have been *unreasonable* in concluding that the instructions do not violate the rule of *Lockett* and *Eddings*. . . . Even were we to agree . . . that our decisions in *Lockett* and *Eddings* inform, or even control or govern the analysis of [the prisoner's] claim, it does not follow that they compel the rule that [he] seeks.

110 S.Ct. at 1261 (emphasis added). A federal habeas court, the Court concluded, must "validate reasonable, good faith *interpretations* of existing precedents made by state courts." *Id.* at 1260 (emphasis added).

Both *Butler* and *Saffle* thus extended the *Teague* doctrine beyond an ordinary concept of non-retroactivity: where a petitioner relies on a legal principle established before his case became final and asserts that he is entitled to federal collateral relief when that principle is applied to the facts of his case, such relief normally is precluded unless the merits of his claim were so clear at the time of the state court decision that no reasonable jurist could have rejected it. *See Butler*, 110 S.Ct. at 1217; *Saffle*, 110 S.Ct. at 1260-1261.

As a general proposition, therefore, a state prisoner is *not* entitled to *de novo* federal collateral review of his constitutional claims.[10] Whether the case involves a

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[10] In *Miller v. Fenton*, 474 U.S. 104, 112 (1985), this Court held that "the ultimate question whether, under the totality of the circumstances, [a] challenged confession was obtained in a manner compatible with the requirements of the Constitution,

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"new" legal question or an issue involving the application of settled law to historical fact, if the prisoner had a full and fair opportunity to litigate his claim in state court,[11] a federal habeas court may not second-guess the state court's decision unless that decision was tantamount to an act of judicial disobedience. Limiting *de novo* review to such instances is entirely consistent with *the* central purpose of the writ. *See Teague*, 489 U.S. at 306; *Brecht*, 944 F.2d at 1375 ("Federal courts should discourage recalcitrance and reward full consideration – which

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is a matter for independent federal determination." *Miller*, of course, is a pre-*Teague* case and therefore is not controlling. This point is underscored by the fact that in *Butler* this Court implicitly rejected the dissent's reliance on *Miller*. *See Butler*, 110 S.Ct. at 1225 n. 10 (Brennan, J., dissenting). And while *Miller's* "independent federal determination" language was repeated after *Teague* in *Arizona v. Fulminante*, 111 S.Ct. 1246, 1252 (1991), *Fulminante* was a direct appeal case, not a collateral proceeding. *Miller*, moreover, went to great lengths to emphasize the unique nature of coerced confession claims and to limit its holding to that context. 474 U.S. at 115-118. It certainly cannot support the broader conclusion that a state prisoner has a general right to *de novo* federal collateral review of his constitutional claims.

[11] *Butler* premises federal court deference not only on the "reasonableness" of the state court decision, but also on its "good faith." 110 S.Ct. at 1217. The *Teague/Butler* "reasonableness" standard thus clearly complements the "full and fair opportunity" standard articulated in *Stone v. Powell*, 428 U.S. at 481-482. If both standards are met, redundant *de novo* federal review can be justified only by a distrust of state judges – a theory this Court has rejected repeatedly. *See, e.g., Sawyer v. Smith*, 110 S.Ct. at 2827; *Sumner v. Mata*, 449 U.S. at 549; *Stone v. Powell*, 428 U.S. at 493 n.35.

they cannot if they review every constitutional claim from scratch.").

B. *Sound Policy Considerations Support the "Reasonableness" Standard.*

Under even the most basic view of the *Teague* doctrine, reasonable good faith decisions by state courts on so-called "pure law" issues are insulated from *de novo* federal collateral review, "even though they are shown to be contrary to later decisions." *Butler*, 110 S.Ct. at 1217. Thus, even where it can be said *with some degree of certainty* that the state court's determination turned out to be "wrong," the costs to the interests of finality and comity are too great to permit independent federal collateral review. *See Teague*, 489 U.S. at 310.

If there is no right to *de novo* federal review of a state court decision that was reasonable when rendered, but nevertheless ultimately "wrong," then surely there is no right to such review of reasonable state court applications of settled law to a particular set of historical facts. After all, when a federal habeas court subsequently reaches a contrary conclusion on such an issue, it cannot be said with *any* degree of certainty that the federal court is "right" and the state court was "wrong:"

> [Such a] reversal . . . is not proof that justice is thereby better done. There is no doubt that if there were a super-Supreme Court, a substantial proportion of our reversals of state courts would be reversed. We are not final because we are infallible, but we are infallible only because we are final.

Brown v. Allen, 344 U.S. at 540 (Jackson, J., concurring); *see also* Bator, *supra*, at 509 ("Is there any sense in which the federal courts will, in the abstract, be more 'correct' with respect to issues of federal law than state courts? Surely not.").

Thus, if the state court afforded the prisoner the opportunity for a full and fair consideration of his claim and applied the law to the facts in a reasonable manner, a federal court's granting of collateral relief based upon mere disagreement with that decision is even *more* intrusive than the type of federal intervention clearly proscribed by *Teague*. By force of logic, therefore, there can be no justification for permitting *de novo* federal collateral review of a state court's application of law to a particular set of facts. *See generally Cooter & Gell v. Hartmarx Corp.*, 110 S.Ct. 2447, 2460 (1990) (deference, not *de novo* review, is appropriate when reviewing "fact-intensive, close calls").

As this Court recognized in *Miller v. Fenton*, 474 U.S. 104, 113-114 (1985), the distinction "between a pristine legal standard and a simple historical fact" is difficult to discern and is often resolved as "a matter of allocation" rather than "analysis." Failure to apply the reasonableness standard to state court applications of law to fact would commit the federal courts to a difficult and unproductive regime of policing, not only the murky boundary between law and fact, but the equally shadowy line between "new rules" and "mere applications." Surely, this is not a wise allocation of time and resources for the federal courts in situations where the state court already has resolved the matter reasonably. *See Brecht*, 944 F.2d at 1373 ("[W]hile federal courts re-do the decisions

already made by the state courts, federal business languishes.").

The reasonableness standard, on the other hand, offers a familiar, easily-applied, bright-line test that simplifies matters greatly for the lower federal courts: if a state prisoner had a full and fair opportunity to raise his claim and the state courts resolved the claim in an objectively reasonable manner, a federal habeas court *must* defer to that decision. In combination with § 2254(d), the unitary reasonableness standard requires that *all* state court findings – legal, factual, and "mixed" – be regarded as presumptively correct. Federal relief is available if, and only if, no reasonable jurist could have rejected the prisoner's claim.

This does not mean, however, that a state prisoner will be without a federal remedy merely because the state court ruled in favor of the government. To the extent that the prisoner's claim is *fact*-dependent, he can obtain *de novo* federal review if he can meet any one of the eight statutory exceptions to § 2254(d).[12] To the extent his claim

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[12] Under § 2254(d), a state court's finding of fact "shall be presumed to be correct" unless it is established:

(1) that the merits of the factual dispute were not resolved in the State court hearing;

(2) that the factfinding procedure employed by the State court was not adequate to afford a full and fair hearing;

(3) that the material facts were not adequately developed at the State court hearing;

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raises *legal* issues, relief is available if he can show that the state court decision was unreasonable or that one of the two *Teague* exceptions exists. But if the state provided a fair forum for consideration of the claim, and if the state court reached a reasonable result, that decision will stand *and should stand*.

Finally, reserving *de novo* federal collateral review for those rare instances where the state court decision constitutes an act of judicial constitutional disobedience has a salutary effect not only on the constitutional interests of finality and comity, but also on society's effort to rehabilitate criminal offenders:

> A procedural system which permits *an endless repetition of inquiry into facts and law in a vain*

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(4) that the State court lacked jurisdiction of the subject matter or over the person of the applicant in the State court hearing;

(5) that the applicant was an indigent and the State court, in deprivation of his constitutional right, failed to appoint counsel to represent him in the State court proceeding;

(6) that the applicant did not receive a full, fair, and adequate hearing in the State court proceeding; or

(7) that the applicant was otherwise denied due process of law in the State court proceeding;

(8) or unless . . . the Federal court on a consideration of . . . the record as a whole concludes that such factual determination is not fairly supported by the record. . . .

search for ultimate certitude implies a lack of confidence about the possibilities of justice that cannot but war with the effectiveness of the underlying substantive commands. Furthermore, we should at least tentatively inquire *whether an endless reopening of convictions,* with its continuing underlying implication that perhaps the defendant can escape from corrective sanctions after all, can be consistent with the aim of rehabilitating offenders. The first step in achieving that aim may be a realization by the convict that he is justly subject to sanction, that he stands in need of rehabilitation; and a process of reeducation cannot, perhaps, even begin if we make sure that the cardinal moral predicate is missing, if society itself continuously tells the convict that he may not be justly subject to reeducation and treatment in the first place. The idea of just condemnation lies at the heart of the criminal law, and we should not lightly create processes which implicitly belie its possibility.

Bator, *supra,* at 452 (emphasis added, footnotes omitted). *See also Schneckloth v. Bustamonte,* 412 U.S. 218, 262 (1973) (Powell, J., concurring); *Sanders v. United States,* 373 U.S. 1, 24-25 (1963) (Harlan, J., dissenting); Friendly, *supra,* at 146.

The possible justifications for *de novo* federal habeas review, and for the consequent message to a state prisoner that he might yet escape responsibility for his crime, are at their low ebb where, as here, the proposed federal review can produce, at best, only a mere disagreement with a decision reasonably reached by the state courts. *Teague* and its progeny rightly demand federal deference

to such state court determinations, and the Fourth Circuit clearly failed to follow that mandate.

II

THE COURT BELOW IMPROPERLY SUBSTITUTED ITS JUDGMENT FOR THE REASONABLE GOOD FAITH JUDGMENT REACHED BY THE STATE COURTS.

The Fourth Circuit did not question the reasonableness of the Virginia courts' rejection of West's sufficiency-of-the-evidence claim. The Court of Appeals merely concluded that it was "right" and that the state courts were wrong. (Ptn. App. 21). To make matters worse, collateral relief was premised on a theory that not only was never raised in state court, but which had never even been mentioned in the district court. Such a flagrant violation of both the *Teague* and procedural default doctrines cannot be permitted to stand.

A. *The Court of Appeals Failed to Apply the Teague Standard of Reasonableness.*

Determining whether a state court's rejection of a petitioner's claim was "reasonable" and in "good faith" requires a determination of whether constitutional precedent existing at the time the petitioner's conviction became final "compelled" a decision in his favor. *Saffle,* 110 S.Ct. at 1261. Acceptance of a petitioner's claim cannot be considered to have been "compelled," however, if it was "susceptible to debate among reasonable minds." *Butler,* 110 S.Ct. at 1217. And this Court has expressly cited as evidence that a claim is "susceptible to debate"

the fact that the claim has been rejected by other courts. *Id.*

It would be difficult to imagine a more clear-cut deviation from this standard of review than the decision of the court below.[13] West's sufficiency claim was rejected by the state trial judge, all seven members of the Virginia Supreme Court, and a federal district court judge. This concurrence of judicial opinion demonstrates, at the very least, that West's claim was not "dictated" or "compelled" in 1979 or now by *Jackson v. Virginia*.[14]

The intrusive "second-guessing" indulged in by the Fourth Circuit is precisely the type of federal intervention the "reasonableness" standard was meant to proscribe. The Court of Appeals conceded that its decision was "a judgment call" (Ptn. App. 13-14) and that it represented a "disagreement on [a] fundamental matter with a properly instructed state jury of twelve, a state trial judge, the state's supreme court, and a federal district judge. . . .

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[13] The Fourth Circuit conceded that neither of the exceptions to the *Teague* doctrine was applicable to West's claim. (Ptn. App. 9, n.3).

[14] The primary case upon which the Fourth Circuit relied, moreover, was not decided until more than two years after West's conviction became final. *See Cosby v. Jones*, 682 F.2d 1373 (11th Cir. 1982) (setting forth five-part analysis for assessing sufficiency challenges to convictions based on "recent possession" inference). And the Fourth Circuit's violation of the *Teague* doctrine is only highlighted by the fact that the *Jackson* "rational factfinder" test is *less* demanding of the prosecution than the "every reasonable hypothesis of innocence" standard the Virginia Supreme Court applied to West's sufficiency claim on direct appeal. *See Jackson*, 443 U.S. at 326; *Inge v. Procunier*, 758 F.2d 1010, 1014 (4th Cir.), *cert. denied*, 474 U.S. 833 (1985).

from a vantage point far removed from the immediacy of the testimonial evidence whose sufficiency is at issue." (Ptn. App. 20). But after stating the very reason why federal courts must defer to state courts, the Fourth Circuit did *exactly* what it may not do: it substituted its own "judgment call" for the reasonable good faith judgment of the state courts. *See Brecht*, 944 F.2d at 1367 ("The district judge substituted her assessment for that of the Supreme Court of Wisconsin: she did not say that its opinion is unreasoned or beyond the bounds of dispute; she simply disagreed. That is not an appropriate stance for a federal judge engaged in collateral review of a state conviction.").

B. *The Court Of Appeals Violated the Procedural Default Doctrine.*

The Court of Appeals' decision is doubly intrusive because it is replete with references to a "growing discomfort . . . about allowing convictions in this day and age to be based solely upon [the common law] inference" and the court's belief that "the basic premise of the inference . . . has been substantially undercut by intervening technological and demographic developments." (Ptn. App. 11-13). But the continued vitality of the common law inference was *never* challenged by West in state court.[15] Nor for that matter was it ever mentioned by West in the district court.

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[15] West does not contend, and the Fourth Circuit was careful not to rule, that the common law inference is unconstitutional on its face. (Ptn. App. 6-8). Indeed, the Court of

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The sufficiency claim West asserted on direct appeal in the Virginia Supreme Court expressly acknowledged the validity of the inference under Virginia law: "The law in Virginia is clear that the recent and exclusive possession of stolen property *will warrant a conviction of larceny* unless the defendant affords a reasonable account of his possession." (J.A. 39, emphasis added). West's claim was *not* that the common law inference had lost any of its vitality, but simply that "the inference of guilt which the Commonwealth may have established was rebutted" by his explanation at trial. (J.A. 40). The Virginia Supreme Court rejected that claim, and West's conviction became final in 1980 when he failed to petition this Court for a writ of certiorari.

Seven years later, West initiated state habeas proceedings by filing a petition in the Virginia Supreme Court which raised the very same sufficiency claim he

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Appeals went so far as to assume expressly, without deciding, that the inference is constitutional. (Ptn. App. 17, n.6). But this was only after the court's post-argument inquiry whether West was challenging the constitutionality of the inference itself (J.A. 57-58), and West's admission in response that he had not objected at trial to the constitutionality of the instruction that explained the inference to the jury. (J.A. 59). The reason for the Fourth Circuit's scrupulous avoidance of this issue is clear: any such frontal assault on the constitutionality of the inference certainly would be barred from federal review by West's undeniable failure to raise it in state court, *see Wainwright v. Sykes*, 433 U.S. at 87, and, as the Fourth Circuit all but acknowledged, by a straightforward application of *Teague*: "If that were the claim, it might be arguable that its vindication would violate the 'no new rule' limitation" of *Teague*. (Ptn. App. 10).

had raised on direct appeal. The petition said nothing about the continued validity of the common law inference. (J.A. 42-43). The Supreme Court dismissed the sufficiency claim because it had already been rejected on direct appeal. (J.A. 48, citing *Hawks v. Cox*, 211 Va. 91, 175 S.E.2d 271 (1970)).

West, moreover, never even hinted at an allegation about the inference's modern-day applicability when he filed his petition in the district court. (J.A. 50-51, 55-56). The district court's opinion shows no sign that West raised any concern about the vitality of the common law inference in modern times; to the contrary, the district judge approached the allegation of insufficient evidence as a straightforward *Jackson* claim, applied the proper standard of review, and deferred to the jury's assessment of West's credibility as mandated by *Jackson*: "It is clear from the evidence . . . that the jury did not believe [West's] explanation." (Ptn. App. 27-28).

West did not attempt to seek certiorari review in this Court on direct appeal. But if he had done so, this Court would have been without jurisdiction to review a claim challenging the modern-day validity of the common law inference because no such claim had been raised in the Virginia Supreme Court. *See* 28 U.S.C. § 1257; Rule 14.1(h). By granting West collateral relief on the basis of an argument never raised in state court, the Fourth Circuit simply allowed him "an end run around the limits of this Court's jurisdiction and a means to undermine the State's interest in enforcing its laws." *See Coleman v. Thompson*, 111 S.Ct. 2546, 2554 (1991). Such an "end run" is totally at odds with the *Teague* and procedural default doctrines and, if given an imprimatur by this Court, will

have a ruinous effect on the vital state interests those doctrines were established to foster and protect.

III

THE COURT BELOW WAS UNFAITHFUL TO *JACKSON V. VIRGINIA*'S PRINCIPLE OF DEFERENCE.

Even before the advent of *Teague*'s reasonableness standard, a federal court reviewing a due process claim that the evidence was insufficient to support a state court conviction was governed by the equally deferential standard set forth in *Jackson v. Virginia*. Under *Jackson, all* the evidence must be viewed in the light most favorable to the prosecution, and the claim must be rejected unless no rational trier of fact could have concluded that the prisoner was guilty beyond a reasonable doubt. 443 U.S. at 319. This deferential analysis applies not only to review of a jury's verdict, but also to the decisions of state appellate courts upholding such a verdict against a sufficiency challenge. *See Lewis v. Jeffers*, 110 S.Ct. 3092, 3103 (1990) ("These considerations apply with equal force to federal habeas review of a state court's finding of aggravating circumstances").

Jackson, moreover, expressly held that the reviewing court must give "full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Id.* Indeed, *Jackson* requires that "a federal habeas corpus court faced with a record of historical facts that supports conflicting inferences *must presume – even if it does not affirmatively appear in the record – that the trier of fact resolved any such conflicts in favor of*

the prosecution, and must defer to that resolution." Id. at 326 (emphasis added); *see also Sawyer v. Whitley*, 945 F.2d 812, 821 (5th Cir.) ("The core concern of the *Jackson* Court, in designing the sufficiency review, was to insulate the discretionary function of the jury from judicial scrutiny"), *cert. granted*, 112 S.Ct. 434 (1991).

Jackson was thus a precursor of the *Teague* doctrine. The same mandatory deference that *Jackson* required of federal courts with respect to a particular type of constitutional claim, *Teague* and its progeny now require with respect to *all* claims raised by a state prisoner in a federal collateral proceeding.

A. *The Court of Appeals Eviscerated the Common Law Inference.*

Jackson explicitly requires that the sufficiency inquiry "be gauged in the light of applicable [state] law." 443 U.S. at 324. At the heart of the sufficiency inquiry in West's case is Virginia's longstanding common law principle that the exclusive possession of recently stolen goods permits the inference of theft. Under *Jackson*, the Court of Appeals was required to respect this tenet of Virginia law. Instead, collateral relief was granted only after the common law principle had been reworked and emasculated.

The Fourth Circuit readily conceded that "[t]he inference that one found in unexplained possession of recently stolen goods was a participant in the theft is an ancient one." (Ptn. App. 11). *See generally Barnes v. United States*, 412 U.S. 837, 843-844 n.5 (1973), *quoting* Thayer, *Preliminary Treatise on Evidence* 328 (1898) ("[T]he laws of Ine [King of Wessex, A.D. 688-725] provide that, 'if stolen

property be attached with a chapman, and he have not brought it before good witnesses, let him prove . . . that he was neither privy (to the theft) nor thief"); *see also* 2 East's, Pleas of the Crown 656 (1716) ("Wherever the property of one man . . . is found (recently after the taking) upon another, it is incumbent on that other to prove how he came by it; otherwise, the presumption is, that he has taken it feloniously."). And, as the Fourth Circuit also conceded, the inference "has been widely employed . . . in our state and federal courts from earliest times." (Ptn. App. 11). *See, e.g., Commonwealth v. Millard*, 1 Mass. 6 (1804). *See also Wilson v. United States*, 162 U.S. 613, 619-620 (1896).[16]

Virginia, of course, is a State with a long and still vibrant common law tradition, *see* Va. Code § 1-10 (Repl. Vol. 1987), and the "recent possession" principle is deeply rooted in our law. "At least since 1872 Virginia juries have been instructed that the defendant's exclusive possession of recently stolen goods, if he offers no reasonable explanation, permits a presumption or inference that the defendant stole the goods." R. Groot, *Criminal Offenses and Defenses in Virginia* 222 (2d ed. 1989), *citing Price v. Commonwealth*, 62 Va. (21 Gratt.) 846, 869 (1872). *See also Carter v. Commonwealth*, 209 Va. 317, 323-324, 163 S.E.2d 589, 594 (1968), *cert. denied*, 394 U.S. 991 (1969); *Bright v.*

[16] The amicus brief that Florida and twenty-four other States filed on Virginia's behalf at the petition stage amply demonstrates that the common law inference retains widespread acceptance: "[T]he vast majority of jurisdictions throughout this country continue to apply this . . . inference." (Florida Amicus Brief at 1).

Commonwealth, 4 Va.App. 248, 251, 356 S.E.2d 443, 444 (1987).

Virginia also recognizes the common law principle that, if an accused thief such as West attempts to explain his possession of the stolen goods, it is solely the jury's province to determine the credibility of the explanation. *See Montgomery v. Commonwealth*, 221 Va. 188, 190, 269 S.E.2d 352, 353 (1980) (jury need not accept the defendant's explanation even if it is "not inherently incredible"). Moreover, *as this Court itself held nearly a hundred years ago*, if the jury concludes that the defendant has falsely "explained" his possession of the stolen goods, such falsehood may be construed by the jury as affirmative evidence of his guilt. *See Wilson*, 162 U.S. at 620-621 ("Nor can there be any question that, if the jury were satisfied . . . that false statements . . . were made by the defendant . . . they had the right . . . to regard [such statements] . . . as in themselves tending to show guilt."). *See also Speight v. Commonwealth*, 4 Va. App. 83, 88, 354 S.E.2d 95, 98 (1987) (en banc) (false testimony viewed as affirmative evidence of larceny).

According to the Fourth Circuit, a federal court is free to invalidate collaterally a state larceny conviction on sufficiency grounds, so as to bar even the possibility of retrial,[17] simply by disagreeing with the jury's assessment of the defendant's explanation for his possession of the stolen goods and with the jury's drawing of the inference of theft that it was told, without objection, it was free to

[17] *See Burks v. United States*, 437 U.S. 1 (1978).

draw. This Court has made clear, however, that the legitimate interests of finality, comity and federalism cannot be brushed aside so easily. Given the inference's venerable pedigree, the Court of Appeals' collateral evisceration of it in the name of "due process" is indefensible.[18] *See Schad v. Arizona*, 111 S.Ct. 2491, 2507 (1991) (Scalia, J., concurring) ("Unless we are here to invent a Constitution rather than enforce one, it is impossible that a practice as old as the common law and still in existence in the vast majority of States does not provide that process which is 'due.' "); *see also Griffin v. United States*, 112 S.Ct. 466, 470 (1991) ("The historical practice . . . fails to support petitioner's claim under the Due Process Clause. . . . ").

B. ***The Court of Appeals Violated the Jackson Standard.***

The decision of the Court of Appeals here clearly was *not* a straightforward application of *Jackson*. Under an unadorned *Jackson* analysis, any reviewing court would conclude, as the district court concluded (Ptn. App. 27-28), that the jury could have reasonably determined that West had lied when he attempted to explain his possession. After all, it could have been perfectly obvious to everyone in the courtroom who saw and heard West testify, as the jury did, that his explanation was false.[19] The Fourth Circuit, however, vacated West's conviction because in *its* subjective judgment "there was nothing inherently implausible about [West's] explanation," his account "could not fairly be treated as positive evidence of guilt" and "was, at most *a neutral factor* in assessing the probative force of the inference." (Ptn. App. 18-19, emphasis added).

Rather than faithfully applying *Jackson*, the Court of Appeals just adopted as its own the five-part analysis previously articulated by another court of appeals in *Cosby v. Jones*, 682 F.2d 1373 (11th Cir. 1982). Under this improperly diluted standard, the jury's assessment of credibility is hardly given the "full play" and deference demanded by *Jackson*. Instead, the credibility of the

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[18] West's argument that the "recent possession" inference is somehow stronger in cases where the defendant is charged with receiving stolen goods rather than larceny (Br. Op. 6 n.3) misses the point in at least two respects. First, under Virginia law, receiving stolen goods is indictable as larceny and is punishable in exactly the same manner. Va. Code § 18.2-108 (Repl. Vol. 1988). Second, when a jury is instructed without objection, as it was here, that it can infer from the recent, exclusive possession of stolen goods that the defendant "was the thief" (Ptn. App. 4), the strength of the inference, once raised by the evidence, is clearly a matter for the jury, not a reviewing court, to decide.

[19] Thus, the Court of Appeals' conclusion that this is a case where "the *only* evidence of guilt consists of the 'basic facts' of the inference" is clearly erroneous. (Ptn. App. 7, emphasis added). By the time the case reached the jury, the evidence of West's guilt had been significantly enhanced by his performance on the witness stand. His incredible trial testimony "would have required the [jury] to draw a series of improbable inferences from the basic facts," *see Jackson v. Virginia*, 443 U.S. at 325, not the least of which was that he had purchased a large assortment of personal property, all belonging to Mr. Cardova, in one transaction for a sum less than half of the property's value, while at the same time having no explanation for his possession of the victim's television and coffee table. (Ptn. App. 3-4; J.A. 21-29).

defendant's explanation is relegated to merely one facet of the five-part analysis; even then, the "standard" is couched in terms of "[w]hether the explanation given by the defendant, *even if discredited by the jury*, was 'not so implausible or demonstrably false as to give rise to positive evidence in favor of the government.' " (Ptn. App. 15, emphasis added, citation omitted).

In a case such as West's where it is undisputed that the jury was properly instructed regarding the common law inference (Ptn. App. 20) and that the defendant's possession of the stolen goods was both recent and exclusive,[20] the jury's resolution of the case necessarily will turn on whether the defendant explains his possession, or if an explanation is made, whether that explanation is credible. After reading West's rather transparent trial testimony (J.A. 19-30), any court reviewing this case under the *Jackson* standard should have conceded that a rational jury could have found West's explanation incredible and that he had lied to conceal his guilt. The Fourth Circuit, however, substituted its own assessment of West's credibility for the jury's, and converted what is actually *the*

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[20] The Fourth Circuit conceded that West's possession of the stolen goods was sufficiently "recent" and "exclusive" to warrant an instruction to the jury concerning the inference of theft. (Ptn. App. 14). The court, however, erroneously implied that there was no evidence that the stolen goods were in West's possession until "January 10, 1979." (Ptn. App. 14). West, himself, admitted under oath that he came into possession of the goods "before" January 1, 1979. (J.A. 25, 27). Thus, the evidence showed that Mr. Cardova's property was stolen from his home sometime between December 13 and 26, 1979 (Ptn. App. 2) and was in West's possession within five to eighteen days later.

determinative factor into a merely "neutral" one.[21] *See United States v. Zafiro*, 945 F.2d 881, 888 (7th Cir. 1991) (Posner, J.) (defendant's false denial of guilt resolves sufficiency issue).

The Fourth Circuit also improperly injected itself into state law matters by concluding that it somehow inured to West's benefit that the stolen goods "were found in 'plain view' in a search of [his] residence" by the police, and that the inference in this case was "weakened" by the fact that West was found in possession of "only" a portion of the goods stolen from the victim's home. (Ptn. App. 16-17). With respect to the former, a thief who stores the fruits of his crime within his home should not be given federal "bonus points" merely because the stolen goods are left within sight of anyone he permits to enter. As to the latter conclusion, under Virginia law it has long been held that a jury "may infer the stealing of the whole from the possession of part." *See Henderson v. Commonwealth*, 215 Va. 811, 813, 213 S.E.2d 782, 784 (1975), *quoting Johnson v. Commonwealth*, 141 Va. 452, 456, 126 S.E. 5, 7

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[21] The "lesson" to be learned from *Jackson* is an "elementary one" that the lower federal courts should "have taken to heart long ago": the mandate of those courts "does not extend to interfering with factfinders in state criminal proceedings or with state courts that are responsibly and consistently interpreting state law, unless that interference is predicated on a violation of the Constitution." *See Godfrey v. Georgia*, 446 U.S. 420, 451 (1980) (White, J., dissenting). Clearly, the Constitution was not implicated by the jury's disbelief of West's testimony and its use of his deliberate falsehood, in accordance with Virginia law, as affirmative evidence of his guilt. *See Brecht*, 944 F.2d at 1369 ("difficulties of inference are subjects for state law").

(1925). Surely, the federal courts have no warrant to determine in a collateral proceeding such minutiae of state law as the portion of a victim's stolen goods that must be found in a defendant's possession before giving rise to the inference of theft. *See Estelle v. McGuire,* 112 S.Ct. at 480 ("it is not the province of a federal habeas court to reexamine state court determinations on state law questions"); *Jackson,* 443 U.S. at 324, n.16 (sufficiency standard must be applied in context of applicable state law).

In sum, the Court of Appeals' decision constitutes an unauthorized alteration of the deferential standard this Court established in *Jackson*. *See* 443 U.S. at 319 n.13 ("[T]he standard announced today does not permit a court to make its own subjective determination of guilt or innocence."). *Jackson's* guiding principle has only been confirmed and enhanced by the other parallel doctrines circumscribing the scope of federal habeas review. Like the *Teague* and procedural default doctrines, *Jackson*'s mandate of deference is premised upon considerations of finality, comity and federalism that cannot be jettisoned merely because a federal court disagrees with the state courts' entirely reasonable resolution of a prisoner's constitutional claim.

CONCLUSION

The judgment of the Court of Appeals should be reversed.

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